UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1998/NGO/122
22 April 1998

ENGLISH
Original: ENGLISH, FRENCH AND
SPANISH

COMMISSION ON HUMAN RIGHTS
Fifty-fourth session
Agenda item 10

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Written statement submitted by Franciscans International, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[22 April 1998]

Perspectives on the situation of human rights in the Great Lakes Region of Africa, especially in Burundi and Rwanda

Introduction

1. The situation of human rights has clearly deteriorated in the Great Lakes Region of Africa, especially in Burundi. With the term of the legislature coming to an end in Burundi at the end of June 1998, the polarization and hardening of positions is already creating a climate of violence which should alarm the international community.

2. In Rwanda, there appears to have been some steps taken to improve the human rights situation, according to the report of the Special Representative, Mr. Michel Mussali. However, due to the limits of his mandate, we consider that the Commission on Human Rights is not sufficiently informed on the human rights situation in the country. Previously, this had been well documented in the reports of the Special Rapporteur on the human rights situation in Rwanda, Mr. René Degni-Ségui whose mandate was unfortunately rescinded at the fifty-third session of the Commission in 1997. Rwanda remains traumatized by the 1994 genocide and by the massacres which continue to this day.

3. There seems to be a lack of cooperation on all sides and a slide towards the armed "solution" to problems. It would also seem that the United Nations has lost control in the region and in fact, for many, the United Nations has lost a great deal of credibility. Some observers claim that the genocide of the Hutu and the Tutsi continues in the region. It is therefore important that the international community acting through the United Nations again deal in a serious way with the situation and carry out its responsibilities vis-à-vis the peoples of Burundi and Rwanda.

4. The complexity of the problems in the region are compounded by other factors such as the ongoing conflicts, the drama of thousands of refugees, and the insecurity which affect States, the people and the economy. Our paper will briefly examine the origins and consequences of the situation, recent human rights violations recorded in Burundi and in Rwanda and finally will present recommendations to the attention of the fifty-fourth session of the United Nations Commission on Human Rights.

Common factors in the region

5. Since the source of power and the legitimacy of the Governments did not emanate from the people, the regimes in place must resort to strong-arm militarization to prevent dissent. Those who are in power even conscript the young who obey without realizing what is at stake in the political and economic situation beyond the obvious ethnic undercurrents. The logic of genocide and the inter-ethnic conflicts continue to mark the fight for power and the domination of one over the other.

6. In such a context, the internal conflicts in the region of the Great Lakes are characterized by certain factors which can be found elsewhere. Among these are the following:

- The phenomenon of impunity has allowed the different regimes in power to recruit and train unemployed youth to become members of militias which terrorize the populations. Political massacres even of top government officials including Heads of State and the massacres of civilian populations have gone unpunished.

- The subordination of rights to political interests.

- The question of refugees and the miserable state in which they are placed.

- A multi-party system founded on war without any political programme.

- A demagogic confrontation and an ongoing conflict between those who want power and those who do everything to hold on to it.

- A practice of exclusion in the key sectors of national life: the army and security services, secondary and higher education, senior positions in the public service, diplomacy and magistrates.

- Economic and social problems: the exodus of rural populations to find work, the inadequacy of secondary schools, hunger in certain regions, the World Bank's structural adjustment programmes which limit salaries and devalues money.

- The perverse influence of certain policies of world powers in the region.

Challenge

7. One of the challenges in the region consists in bringing about a national consensus on the source of power and on the foundations of the legitimacy of governing officials in the region. It is also important to guarantee a balance of power between the State and the people; to enshrine constitutionally the protection of ethnic, social, political and economic minorities and majorities, and to create control mechanisms by creating mixed monitoring commissions. Finally, it is imperative to redefine the role of the army by transforming the present view of security and local administration services and to give back to the population its economic responsibility.

Burundi

8. In Burundi, the human rights situation has unfortunately deteriorated notwithstanding the official discourse which does not allow for neutral and independent investigations on the ground. The camps which the international community has criticized have not all been dismantled. There appears to be a policy of regrouping people on new sites which are dictated more by military strategies than humanitarian concerns.

9. The behavior of certain local administrations and military operations reduces the population to a form of slavery and hold them ransom, thereby creating a climate of fear. The male population flees the area and some cases of suicide have been recorded which is another indication of the gravity of the situation.

10. Those who show any sign of independence towards the regime are legally harassed. For example, the President of the National Assembly cannot freely leave the country.

11. Amnesty International reports on cases of arbitrary arrests, on trials of unacceptable international standards, of torture, of disappearances and summary executions remain alarming. However, in cases where independent inquiries are deemed necessary, the regime in power does not seem open to finding ways to arrive at the truth. One of the tragic events occurred in the summer of 1997 when 600 people were killed in the conflict in the North West involving rival Hutu rebels. Then on 1 January 1998 there were the violent episodes around the Bujumbura Airport following attacks by rebel groups. This provoked a strong armed response by the Burundi army using heavy defence equipment. Over 300 unarmed civilians were killed, most of them children, women and elderly people who were not able to escape the gunfire. There were also a number of deaths of military personnel and rebels. On 6 January 1998 another incident occurred in Muramvya where the Health Centre was destroyed and about 87 civilians were injured.

Rwanda

12. The decision by the 1997 Commission on Human Rights to rescind the mandate of the Special Rapporteur on the human rights situation in Rwanda, René Degni-Ségui, and to replace him with a Special Representative was an unfortunate one. It has had repercussions on the human rights situation in the country and will allow other regimes to legitimize withdrawing from the control and surveillance of United Nations human rights mechanisms.

13. While it is recognized that the regime in Kigali has accomplished a lot to reinstal the judiciary, it would seem that it is in the hands of apprentices. The army appears to play a role in the judiciary in orchestrating arrests without proper warrants. Further, the question has been asked whether Rwandan justice is effectively capable of prosecuting crimes against humanity committed by members of the Rwandan Patriotic Army (RPA). Also it would seem that the information services of the Government which does not have the authority to make arrests according to the Arusha Peace Accord still terrorizes the population and makes arbitrary arrests. It is also regrettable that the International Penal Tribunal on Rwanda focuses on the leading figures of the genocide while thousands of innocent people lie in prison, some already condemned to capital punishment and others dying because of miserable prison conditions. According to International Committee of the Red Cross reports there are 120,000 accused waiting judgment.

General recommendations

14. Franciscans International in collaboration with the Dominicans recommends that the Commission:

- Take appropriate measures to put an end to the generalized conflict which threatens the already precarious situation in the whole region.

- Continue to encourage the Governments in Burundi and Rwanda to create in their countries verifiable conditions to reassure refugees who wish to return to their homeland and to guarantee the repatriation of refugees in conditions of security and dignity.

- Provide the International Penal Tribunal with the human and material resources to carry out its mission in the most effective way possible.

- Request States which give refuge to persons wanted by the Tribunal to transfer them to the proper authorities for judgment.

- Assist Governments concerned to bring charges against the perpetrators of all massacres and assassinations in order to break out of the cycle of impunity, while at the same time respecting human rights and fundamental freedoms and avoiding partisan justice.

Recommendations concerning Burundi

15. In terms of Burundi, Franciscans International and Dominicans recommend to the Commission the following:

- To condemn energetically the latest acts of violence and to remind all those involved in the conflict in Burundi of their obligations and responsibilities under international humanitarian law and human rights.

- To renew the mandate of the Special Rapporteur on Burundi, Mr. Paulo Sergio Pinheiro.

- To demand that Burundi authorities guarantee freedom of movement for the President of the National Assembly of Burundi.

- To request an end to the legal harassment of political opponents.

- To take concrete initiatives toward achieving a cease-fire as soon as possible between all parties to the conflict and to begin a true dialogue on the nature of the political organization for the society to be created.

- To invite all concerned international actors, in particular from those countries which have in the past carried out important historical obligations in the region, to commit themselves to the completion of the mediation undertaken by Mwalimu Julius Nyerere and to support convening the next meeting in Arusha.

- To invite also all concerned countries to put an end to the proliferation and to the sale of arms to the region, especially to Burundi.

Recommendations concerning Rwanda

16. In terms of Rwanda, Franciscans International and the Dominicans recommend:

- That the Commission reactivate the mandate of a Special Rapporteur on Rwanda.

- That local and international organizations for the defence of human rights be allowed to freely observe and monitor the respect and implementation by Rwanda of its obligations related to the international human rights instruments which it has ratified.

- That the Government initiate a constructive dialogue aimed at the national reconciliation of all parties.

- That the legal system be fair and that accused persons be guaranteed a fair trial.

- That refugees who have returned to the country be guaranteed appropriate measures of reintegration and protection.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1998/NGO/123
24 April 1998

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fourth session
16 March - 24 April 1998
Agenda item 20

RIGHTS OF THE CHILD

Written statement submitted by the North-South XXI, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[22 April 1998]

GE.98-12608 (E)

The plight of children in Sri Lanka

A. The impact of the "war for peace"

1. Children are regular victims of artillery shelling and aerial bombing of Tamil civilian areas in the North-Eastern Province (NEP). The attacks are unleashed by the armed forces indiscriminately, often blindly at night, to principally terrorize the civilian population. The child victims are either killed or maimed and/or orphaned. The attacks are the more recent variation, since the mid-1980s, of a sustained strategy of collective punishment directed against Tamil civilians irrespective of gender or age.

2. The attacks have intensified after June 1990. Twenty-five schoolchildren were killed on the spot and many more injured when Sri Lanka Air Force Pucara planes bombed the Nagarkoil Central School, in the Jaffna peninsula, in September 1995. Seven children under the age of 12, the youngest being 3 years of age, were massacred in Kumarapuram in February 1996 by the armed forces. Amnesty International confirmed that three teenagers were deliberately shot at close range by police and home guards in Thampalakamam in February 1998. In a particularly harrowing incident of military sadism which took place in Kiran, Batticaloa, in late March 1998, a six-year-old girl, Peethamparam Sasikala, was ordered to run and then shot in the back by security personnel.

3. The psychological impact is not immediately obvious but nonetheless far-reaching.

B. The impact of the embargo imposed on supplies of food by the Sri Lankan Government

4. The Government imposed the embargo of food supplies to the NEP between 1985 and July 1987. During this period the Government disingenuously claimed that the embargo was aimed at starving out the Liberation Tigers of Tamil Eelam (LTTE), and that supplies of food essential to meet the needs of Tamil civilians was being allowed through. However, the international community was not convinced then and the Sri Lankan Government was condemned for implementing a policy of genocide against the Tamil people.

5. The Government reimposed the same food embargo, while offering the same unconvincing rationalization, in June 1990, and has maintained the embargo up to now without interruption. The embargo includes restrictions on the supply of food for infants and nutritional food supplements for children.

6. Starvation is common and malnutrition among children is rampant. In the Mullaitivu District, out of a random sample of 16,767 children under 5, those who were normal were only 4,863; 6,371 children were found to be afflicted with third degree malnutrition, 3,186 children with second degree and 2,347 with first degree malnutrition. Children have developed night blindness and students are so weak that schools are forced to close by 10 a.m. because the students cannot cope with schooling without food. The impact of malnutrition will persist as the affected children grow up into underdeveloped adults - mothers and fathers.

C. The impact of the embargo imposed on supplies of essential medicines by the Sri Lankan Government

7. Existing health services are grossly insufficient. In the Mullaitivu District, for example, there are 11 midwives and one public health inspector (PHI) for a population of over 200,000. According to the specifications of the Ministry of Health, there should be one midwife for every 2,500 people, but there is one midwife for about 19,000 people. The Ministry also specified that there should be one PHI for every 8,000 people.

8. Children weakened by malnutrition fall easy prey to malaria, typhoid and scabies. There is an acute shortage of medicines needed to treat these diseases. The shortage is due to restricted supplies; and it is aggravated by the Government supplying drugs close to or past their expiry date. Rabies is a major threat. The Government banned the supply of Stichneeds necessary to put down stray dogs. After considerable pressure the Government has authorized a trickle of 200 grammes of Stichneeds. The supply of antibiotics is systematically restricted, which severely limits the possibility for treating common infections among children.

9. Consequently, infant mortality has risen sharply. As in the case of the embargo on food supplies, here too the Government dishonestly claims that the supply of medicines is being restricted to deny access to them by the LTTE. However, the combined effect of deliberately depriving children of medicine and food has genocidal consequences.

D. The impact of the damage and destruction caused to the educational infrastructure by the Sri Lankan Government

10. Artillery shelling and aerial bombing has destroyed about 20 per cent of the schools. The armed forces occupy many of the remaining schools. As a result, thousands of Tamil children do not have access to minimum educational facilities. The children who live in refugee camps or who are orphaned are particularly affected.

11. Educational facilities, where available, are woefully inadequate. There is an acute shortage of teachers, textbooks, furniture and equipment. In the Thunukkai Division of the Mullaitivu District, for instance, the present facilities were barely able to cope with about 2,300 students before the population was displaced in 1995, now they have to serve 8,571 children. Students study under trees. The schools need 313 teachers but have only 128. So the department is forced to employ 106 volunteer teachers, each paid an allowance of 500 SL Rs per month which is collected from the displaced population at the rate of 10 Rs per person per month. According to the Ministry of Education about 120,000 children are without access to any educational facilities.

12. Non-governmental organization officials working on the ground estimate the number of children who are denied education to be much higher. For instance, it is estimated that some 14,000 children between year 2 and 5 in the Jaffna peninsula are not being sent to school because parents fear for their safety.

13. Consequently, the education of the vast majority of Tamil children has been massively disrupted, as evidenced by their declining performance at examinations. Despite the dismantling of its administration in the Jaffna peninsula, the LTTE has, within its limited resources, continued to discharge its social responsibilities. The organization has provided educational facilities for female and male children who have lost their parents in the war, at Chencholai and Kantharuban Arivuchcholai children's homes, respectively.

E. The sexual abuse of children

14. At the checkpoints manned by the Sri Lankan armed forces in the NEP children have been arbitrarily arrested and many of them have disappeared. Arrested girl-children have been gang-raped by the Sri Lankan security forces. The gang-rape of Krishanthy Kumaraswamy in September 1996 is well known. She was arrested at the Chemmanai checkpoint on her way back from school, raped and murdered. Another case in point is the rape of Thenuka Selvaraja, a 10-year-old child.

15. Rape is routinely used as a weapon of war by the Sri Lankan security forces against Tamil females - both children and women - to systematically terrorize and dehumanize them. Tamil children in refugee camps, which are virtual concentration camps, are most vulnerable to sexual abuse, particularly at the hands of the Sri Lankan security personnel who run the camps.

16. The Sri Lankan Government has turned a blind eye to the sexual exploitation of Sinhalese children in the South by sex tourists. Some concern is being expressed in official circles about the activity of paedophiles. However, it is a token gesture. The Government has for many years been aware of the sexual exploitation of children, but it has continued to sacrifice the Sinhalese children to earn hard currency, which is desperately needed to finance the war against the Tamil people - including Tamil children.

- - - - -

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1998/NGO/124
24 April 1998

Original: ENGLISH and FRENCH

COMMISSION ON HUMAN RIGHTS
Fifty-fourth session
Agenda item 10

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Written statement submitted by Nord-Sud XXI, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[22 April 1998]

OBSTACLES TO CONFLICT RESOLUTION IN SRI LANKA

(a) Political basis for the resolution of the Tamil question within the Island of Sri Lanka

1. The armed conflict in Sri Lanka can be resolved if provision is made for the treatment of all religious communities as equals within a secular State, and for the sharing of power in the Centre between the Tamil and Sinhalese peoples and the devolution of power to the regions.

(b) The barriers to conflict resolution in the 1978 United National Party (UNP) regime

2. The obstacle to re-establishing a secular State can be found in article 9 of the Constitution which specifies that: "The Republic shall give to Buddhism the foremost place". The provision privileged the Buddhists (who are Sinhalese) to the detriment of Hindus and Muslims (who are Tamils) and Christians (who are found among Sinhalese and Tamils). Tamils criticized the provision as a departure from the secular traditions and they underlined the return to a secular political framework as an essential condition for resclving the Tamil question.

3. The obstacles to the sharing of power in the Centre and devolution of power to the region can be found in:

- Article 2 of the Constitution, which states that "The Republic of Sri Lanka is a Unitary State."

- Article 76 of the Constitution, which states that:

"(1) Parliament shall not abdicate or in any manner alienate its legislative power and shall not set up any authority with legislative power.

(2) It shall not be a contravention of the provisions of paragraph (1) of this article for Parliament to make, in any law relating to public security provision empowering the President to make emergency regulations in accordance with such law.

(3) It shall not be a contravention of the provisions of paragraph (1) of this article for Parliament to make any law containing any provision empowering any person or body to make subordinate legislation for prescribed purposes, including the power:

(a) to appoint a date on which any law or any part thereof shall come into effect or cease to have effect;

(b) to make by order any law or any part thereof applicable to any locality or to any class of persons; and

(c) to create a legal person, by an order or an act.

In subparagraphs (a) and (b) of this paragraph, "law" includes existing law.

(4) Any existing law containing any such provision as aforesaid shall be valid and operative."

4. Under the operation of articles 2 and 76, the Constitution preserved the unitary State and permitted political decentralization (through delegation of authority) only. The Provincial Councils (PCs) established under the 1987, 13th Amendment, therefore, are institutions of political decentralization. The PCs are essentially Municipal Councils (MCs) and the so-called "statutes", or subordinate legislation of PCs are little more than the Ordinances of MCs. The PCs are inherently incapable of providing the institutional framework for political devolution (through shared sovereignty), the indispensable pre-condition for resolving the Tamil question.

(c) Admission of the existence of the constitutional barriers

5. The President Kumaratunga's Devolution Proposals of August 1995 retained the provision regarding the primacy of Buddhism and was silent on article 2. However it conceded the need to repeal article 76 as a necessary pre-condition to resolving the Tamil question (para. IX).

(d) The barriers to conflict resolution in the October 1997 Parliamentary Select Committee Report on Constitutional Reform (Draft Constitution) of the Peoples Alliance (PA) regime led by the Sri Lanka Freedom Party (SLFP)

6. Obstacle to re-establishing a secular State: The Draft Constitution reiterated that Buddhism shall enjoy "the foremost place" and went further to entrench Buddhist supremacy by providing for the constitution of a "Supreme Council" of Buddhist Clergy (art. 7).

7. Obstacles to the sharing of power in the Centre and devolution of power to the regions: article 76 of the 1978 Constitution was reproduced in article 92 of the Draft Constitution:

"(1) Parliament shall not abdicate or in any manner alienate its legislative power and shall not set up any authority with any such legislative power.

(2) It shall not be a contravention of the provisions of paragraph (1) of this article for Parliament to make, in any law relating to public security, provision empowering the President to make emergency regulations in accordance with such law.

(3) It shall not be a contravention of the provisions of paragraph (1) of this article for Parliament to make any law containing any provision empowering any person or body to make subordinate legislation for prescribed purposes, including the power:

(a) to appoint a date on which any law or any part thereof shall come into effect or cease to have effect;

(b) to make by order any law or any part thereof applicable to any locality or to any class of persons; and

(c) to create a legal person, by order or an act and for the purposes of subparagraphs (a) and (b) of this paragraph, "law" includes existing law.

(4) Subject to the provisions of the Constitution, any existing law containing any such provision as aforesaid shall be valid and operative."

8. So the Regional Councils (RCs) proposed in the Draft Constitution too would lack legislative power. They, like the present PCs, would also be little more than MCs. They are institutions for administrative decentralization and so utterly irrelevant to conflict resolution.

9. This clearly exposes the irrelevance of the term "Union of Regions" (art. 1 (1)), which replaced article 2, and the provisions for "The Devolution of Power to Regions" (chap. XV). The title "Union of Regions" by itself means nothing. For the 1978 Constitution spelled out the name of the country as "The Democratic Socialist Republic of Sri Lanka"; however, there never was, and still is nothing, remotely socialist about Sri Lanka. The term "Union of Regions" is a political smokescreen drawn to mask article 92, which emptied the devolution terminology of any significant polical or constitutional meaning.

10. Since article 92 was included in the 1997 Draft Constitution, the provisions for so-called "devolution of power" are an unconscionable deception. It is an attempt to deceive the Tamil people. It is also an unprincipled manoeuvre to hoodwink the international community into believing that the Draft Constitution is a genuine basis for resolving the Tamil question.

(e) <u>The way forward</u>

11. The Draft Constitution as it stands now provides no basis whatsoever for negotiations between the PA regime and the Tamil people. The PA regime must first delete articles 7 and 92. That will open the way for genuine negotiations and indicate the regime's sincerity to reach a negotiated settlement with the Tamil people through the Liberation Tigers of Tamil Eelam (LITTE).